

DA 09-0500

IN THE SUPREME COURT OF THE STATE OF MONTANA

LON PETERSON,

Plaintiff/Appellant and Cross-Appellee,

v.

ST. PAUL FIRE & MARINE INSURANCE COMPANY,

Defendant/Appellee and Cross-Appellant.

**PLAINTIFF/APPELLANT and CROSS-APPELLEE PETERSON'S
RESPONSE TO ISSUES RAISED BY AMICUS**

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ARGUMENT

American Insurance Association (AIA) has not read Peterson's original brief and has used its brief to argue that St. Paul had no duty to make advance payments when Peterson has not even raised that issue on appeal and when the jury verdict form did not even instruct the jury to answer that question.

Peterson's case against St. Paul is based on the fact that the attorney hired by St. Paul to defend Lindberg (Gregoire), filled St. Paul's claims file with his opinion that Lindberg's negligence was at least 50%, and as great as 70%, and that under no circumstances would a jury ever find that Peterson was more than 50% negligent, thereby mandating recovery by Peterson of at least 50% of his damages.

Gregoire told Peterson throughout the underlying case that Lindberg was in no way negligent, while at the same time, Gregoire was secretly telling St. Paul that Lindberg was clearly negligent, up to 70%. A bad faith case is determined by what is contained in the insurance company's claims file. Since the claims file clearly contained Gregoire's admissions, which St. Paul now contends it had an absolute duty to follow, St. Paul allowed a judgment to be entered against it for \$850,000.00, when no liability facts had changed.

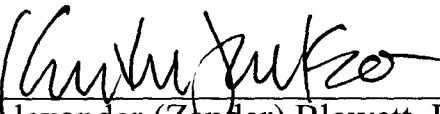
St. Paul simply held on to its \$850,000.00 for three years and refused to pay Peterson's claim, even though Gregoire had been secretly telling it that it must pay. Contrary to AIA's assertion, Peterson has made no claim that St. Paul acted in bad faith simply because of the initial evaluation by its adjuster. None of the issues raised by AIA bear on Peterson's appeal. When an attorney,

like Gregoire, admits in the claims file that under no circumstances will the claimant fail to recover because his negligence will never exceed 50%, liability is clear, as a matter of law, based on that admission.

If Gregoire had told St. Paul that Lindberg was not at all negligent, or that Peterson was more than 50% negligent, there would be no bad faith on the part of St. Paul for refusing to pay. However, that was not the case. Gregoire told St. Paul just the opposite and St. Paul finally paid the \$850,000.00, pursuant to a judgment it allowed to have entered against itself, when there had been no change in the liability facts whatsoever. Pursuant to Gregoire's admissions, and the adverse judgment, the comparative negligence statute mandated that liability was reasonably clear, as a matter of law.

DATED this 29th day of January, 2010.

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CERTIFICATE OF SERVICE

I do hereby certify that on this 29th day of January, 2010, I mailed a true and correct copy of the above and foregoing through the United States Postal Service, postage prepaid, to the following:

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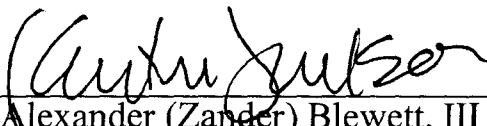


CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4)(d) of the Montana Rules of Appellate Procedure, I certify that this brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced; and the word count calculated by WordPerfect 11 for Windows, is not more than 5,000 words, not averaging more than 280 words per page, excluding table of contents, table of authorities, certificate of service and certificate of compliance.

DATED this 29th day of January, 2010.

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